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No. 86-1815

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CREDIT BUREAU SERVICES — NEW ORLEANS, D/B/A CHILTON CORPORATION,

Petitioner,

vs.

THOMAS K. PINNER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF ASSOCIATED CREDIT BUREAUS, INC. AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Associated Credit Bureaus, Inc. ("ACB") hereby respectfully moves for leave to file the attached brief as *amicus curiae* in support of the Petition for Writ of Certiorari filed by Credit Bureau Services — New Orleans, doing business as Chilton Corporation ("Chilton").

As set forth more fully in the Statement Concerning Interest of Amicus Curiae contained in the accompanying Brief, ACB is a national non-profit trade association, the members of which are approximately 1,200 credit bureaus throughout the United States.

ACB is concerned that the court below misinterpreted the reinvestigation and dispute handling requirements of Section 611

of the Fair Credit Reporting Act, 15 U.S.C. §1681i, in a manner which, if allowed to stand, would adversely impact the functioning of our country's consumer credit system.

ACB's knowledge of the credit reporting business and of the essential role played by that business in facilitating this country's consumer commerce, together with ACB's familiarity with the goals and purposes of the Act, place it in a unique position to contribute to the Court's consideration of the issues presented in the Chilton petition.

For the foregoing reason, ACB respectfully requests that it be permitted, as *amicus curiae*, to urge that the petition filed by Chilton be accepted for review.

Respectfully submitted,

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Consent to file this brief was requested and consent was refused by Counsel to Respondent Pinner.

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I. STATEMENT CONCERNING INTEREST OF AMICUS CURIE.

Amicus curiae, Associated Credit Bureaus, Inc. ("ACB"), is a national non-profit trade association incorporated under the laws of the State of Missouri. ACB represents approximately 1,200 credit bureaus in the United States, including petitioner Credit Bureau Services-New Orleans, doing business as Chilton Corporation ("Chilton"). In appearances before Congress and in the courts, ACB has supported the Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.* (1970) (the "Act") and other legislation related to the credit industry. Indeed, ACB worked closely with the sponsors of the Act and supported its passage.

The 1,200 ACB member credit bureaus ("consumer reporting agencies" under the Act) produce an estimated 200 million consumer credit reports annually. These reports are compiled from a variety of sources, including the accounts receivable information of credit grantor subscribers and public record information. From these and other constantly changing data bases, consumer reporting agencies issue credit reports to credit grantors, potential employers, insurers and other firms which are permitted to receive such information under the Act. Those firms ("users" under the Act) rely on the consumer reporting agency members of ACB to supply them with accurate, up-to-date and objective information with which to make informed and intelligent decisions, utilizing their own criteria, concerning the provision of credit, employment or insurance to consumers.

The credit reporting and credit granting industries are mutually dependent on the free flow of such information. Consumer reporting agencies must speedily and efficiently compile information obtained from their users and, upon request, immediately report such information to a user, all within the framework of the Act's requirement to utilize "reasonable procedures to assure maximum possible accuracy", 15 U.S.C. §1681e.

The performance of such tasks must be made within a cost format consistent with the realities of the consumer credit marketplace. Consumer reports for credit granting purposes are generally sold for less than $3.00 per report, thus enabling credit grantors to avoid passing along such expenses directly to credit applicants.

ACB's knowledge of the credit reporting business and of the essential role played by that business in facilitating this country's consumer commerce, together with ACB's familiarity with the goals and purposes of the Act, place it in

a unique position to contribute to the Court's consideration of the issues presented in the Chilton petition.

Each of ACB's members has an interest in the outcome of this proceeding, as do all the users and beneficiaries of the credit reporting system. If the decision below is permitted to stand, the economics of the industry will be greatly affected, not only in terms of increased litigation and litigation costs, but also with respect to the operational expenses sure to be incurred and passed along to consumers as a result of the reverification requirements imposed by the Court of Appeals.

For the foregoing reasons, ACB has requested the opportunity to submit this brief as *amicus curiae* in order to urge the Court to review the decision below.

II. SUMMARY OF ARGUMENT.

Upon receiving an initial notice of a dispute concerning an item of information in a consumer credit report, a consumer reporting agency is required by the Act to contact the credit grantor and reverify the accuracy of the information concerning the delinquent account. 15 U.S.C. §1681i(a). According to Section 611(c) of the Act, 15 U.S.C. §1681i(c), the agency must record the existence of the consumer's dispute only if, following the agency's reverification, the consumer files a statement of dispute. The court below erred in holding that Chilton violated the Act by failing to note the dispute in the consumer's file when the consumer's initial inquiry, as opposed to a post-verification statement of dispute, was received.

The Act requires that a consumer reporting agency delete information in a consumer's file if, upon reverification, that information is found to be inaccurate or can no

longer be verified. 15 U.S.C. §1681i(a). In the instant proceeding the court held that, when a credit grantor is a small business having only one source of reverification, the agency must delete even accurate information if the consumer advises the agency that he is involved in a personal dispute with that sole source of potential reverification. This holding is not supported in the Act and, if permitted to stand, will encourage delinquent consumer debtors to manipulate the contents of their credit files by, in effect, reporting "personal disputes" in order to disqualify reverification sources and thereby force deletion of information vital to users of the credit reporting system.

III. ARGUMENT.

A. A Consumer Reporting Agency's Failure to Note a Disputed Item in a Consumer's Credit File Does Not Constitute a Violation of the Fair Credit Reporting Act Absent a Notice of Dispute Filed by the Consumer After the Agency's Reinvestigation and Reverification of the Account Information.

Previous court decisions interpreting the Act have not addressed the issue of *when* the consumer reporting agency is obligated to note the existence of a dispute in the consumer's credit file.

Section 611(a) of the Act, 15 U.S.C. §1681i(a), provides that, upon receiving a consumer's initial notice of dispute, a consumer reporting agency must reinvestigate and reverify the creditor's claim of delinquency. This was done by Chilton upon receipt of Pinner's initial notice of dispute on January 11, 1982. *Pinner* v. *Schmidt*, 805 F.2d 1258, 1261 (5th Cir. 1986).

Section 611(b) of the Act, 15 U.S.C. §1681i(b), provides that if, *after* the agency's reinvestigation, the dispute is not resolved, the consumer may file a statement of dispute with the agency. Whenever such a post-reverification statement of dispute is filed, Section 611(c) of the Act, 15 U.S.C. §1681i(c), requires the agency to include a notation of the dispute and a summary thereof in all subsequent reports containing the disputed information.

The court below found that, once Chilton had reinvestigated and reverified Pinner's delinquent account,

> [t]here was unrefuted testimony from Chilton employees establishing that they attempted to contact Pinner's attorney to relay that Chilton had reaffirmed the accuracy of his credit history. The telephone calls were not returned.

Pinner v. *Schmidt*, 805 F.2d at 1263. Accordingly, Chilton attempted to inform Pinner of its reverification and of his right to file a statement of dispute. Pinner never filed such a statement.

Because Chilton never received a statement of dispute from Pinner *following* its reverification of Pinner's delinquent account, the Act did not require that the dispute be noted in the Pinner credit file. The court below, however, concluded that Pinner's *initial* inquiry or notice of dispute on January 11, 1982 triggered an obligation on the part of the agency to include the dispute in subsequent reports. This holding is contrary to the very language of the Act and, if permitted to stand, would drastically alter the manner in which consumer reporting agencies conduct their business.

ACB's members currently structure their business operations in reliance upon the five-step dispute-handling procedure contemplated in the Act: (1) the consumer files

an initial notice of dispute, (2) the agency reinvestigates and reverifies, (3) the consumer is advised of the reverification,[1] (4) the consumer files a statement of dispute, and (5) the agency includes a notice and summary of the dispute in the consumer's file. Under the decision below, continuation of operations based upon that statutory framework will subject consumer reporting agencies to potential liability under the Act on a daily basis. The Court must grant the petition of Chilton in order to resolve this issue and to remove the cloud of uncertainty which now hangs over the consumer credit reporting industry.

B. A Delinquent Consumer Debtor Should Not Be Permitted to Force the Deletion of Accurate Information from his Credit File Merely by Advising the Consumer Reporting Agency That He Is Involved in a Personal Dispute with the Agency's Sole Source of Potential Reverification.

As noted above, upon receipt of a consumer's initial notice of dispute, a consumer reporting agency is required to "reinvestigate and record the current status of the information." 15 U.S.C. §1681i(a). In the instant case, the court held that if there was only one source of reverification at the office of the credit grantor (Sherwin-Williams), and if the consumer had advised the agency that he had a personal dispute with that single source of reverification, then the information could not be reverified and must be deleted from the consumer's file.

> If, as Chilton argues, there was no other authority to turn to to verify Pinner's account, Chilton should have deleted the information altogether, as is required by §1681i(a).

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1. If found to be inaccurate or no longer verifiable, the information is deleted from the file.

Pinner v. *Schmidt*, 805 F.2d at 1262. The court found this to be the proper result despite the fact that the account information contained in Pinner's credit report was "substantially correct." *Pinner* v. *Schmidt*, 805 F.2d at 1264.[2]

If the foregoing novel interpretation of the Act is permitted to stand, consumer debtors will be able to manipulate the contents of their file quite easily, to the detriment of the users of the consumer reporting system. It is not unusual for a credit grantor to have a single credit manager or accounts receivable clerk responsible for providing information to credit reporting agencies. Under the Fifth Circuit ruling, consumers desiring to "clean up" their credit reports could dispute a delinquent account and then prevent reverification by claiming to be involved in a personal dispute with the reverification source; the agency would then be required to delete even accurate information concerning the delinquent account.[3]

Simply stated, the Act neither requires nor even suggests that deletion is the proper course of action in such a circumstance. The Act, in fact, anticipated that there would be situations in which reverification would not resolve a dispute. If the consumer disputes the credit grantor's position as reverified by the consumer reporting agency, the

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[2] Pinner's account with Sherwin-Williams was in fact delinquent, but in the amount of $121.71 rather than the $171.11 amount reported by Sherwin-Williams. As the court noted, "a potential creditor checking with Chilton would only be concerned with whether or not the account was delinquent, not with whether the balance was $171.11 or $121.71." *Pinner* v. *Schmidt*, 805 F.2d at 1264.

[3] For a fee, so-called credit clinics will advise a consumer of the manner in which the Act may be misused in order to alter the consumer's credit file. Since the Fifth Circuit ruling, some credit clinics have actually advised consumers to inform the credit bureau about personal disputes with credit grantor personnel to thwart reverification, and thereby compel deletion, of adverse credit information.

consumer's recourse, as set forth plainly in the Act, is to "tell his side of the story" by filing a statement of dispute which must be included or summarized in all future credit reports. 15 U.S.C. §168li(c). To require the consumer reporting agency to delete the information, as opposed to noting the dispute, thwarts the Congressional purpose of fair and accurate credit reporting. Surely the need of the banking system (and the credit granting system as a whole) extends not only to assuring that positive information about a consumer is in his consumer report, but also to assuring that negative information, so long as it is accurate, is also in a consumer's credit report. Credit grantors need complete information in order to make sound judgments regarding the extension of credit. When making decisions without complete data, credit grantors will either extend credit to persons who are unsafe credit risks or be forced to deny credit to some who are creditworthy.

Consumer reporting agencies simply cannot, in the face of the statutory requirement to assure maximum possible accuracy, delete information which a credit grantor deems to be accurate simply because a consumer vociferously disputes an item of information. All the agency can do in such circumstances is add the consumer's dispute to the report. A user receiving the consumer's report can then base its credit decision on all of the relevant information.

This issue is crucial to ACB's member consumer reporting agencies, for they must be able to know that their reverification efforts will not be "second-guessed" by a consumer who later claims to have been involved in a personal dispute with the reverification source. If agencies are to be required, contrary to the Act, to judge the veracity of those sources of reverification, the issuance of credit will become time-consuming and, as a result, prohibitively expensive.

IV. CONCLUSION.

ACB is concerned that the decision of the United States Court of Appeals for the Fifth Circuit is contrary to law and, if permitted to stand, will lead to (a) the imposition of liability upon consumer reporting agencies in a manner wholly unintended by Congress, (b) a tremendous increase in the cost of generating credit reports and, accordingly, credit, (c) the manipulation of the contents of credit reports by unscrupulous consumer debtors, and (d) a potential tightening of consumer credit by credit grantors unable to obtain accurate information upon which to base their decisions.

For the foregoing reasons, *amicus curiae* ACB urges the Court to grant the petition of Chilton and to review the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 3rd day of June, 1987, served three copies of the foregoing Motion for Leave and Brief of Associated Credit Bureaus, Inc. as Amicus Curiae upon each of the following by placing same in the United States mail, properly addressed and postage prepaid:

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